

- (1) What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law.

The Appeals Board holds the findings of fact and conclusions of law set forth in the Award of the Special Administrative Law Judge accurately discusses the appropriate findings and conclusions necessary to properly decide this matter. A reiteration of same in this Award is unnecessary. The Special Administrative Law Judge, in reviewing the testimony and medical evidence contained in the file, including the evidence regarding claimant's alleged work disability, has concluded that claimant is entitled to a work disability, having suffered a thirty-five percent (35%) loss of ability to earn comparable wages and a twelve percent (12%) loss of ability to perform work in the open labor market. The Appeals Board adopts the opinion of the Special Administrative Law Judge in that regard and incorporates his opinion herein by reference as if fully set forth herein.

In discussing the analysis of claimant's work disability the Special Administrative Law Judge cites *Hughes v. Inland Container Corp.*, 247 Kan. 407, 799 P.2d 1011 (1990), as controlling. The Special Administrative Law Judge found claimant to have suffered a twelve percent (12%) loss of ability to perform work in the open labor market and a thirty-five percent (35%) loss of ability to earn a comparable wage, based upon the medical opinions of Dr. Vito J. Carabetta and Dr. Ernest R. Schlachter as analyzed in the reports of Mr. Jerry Hardin and Ms. Karen Terrill.

The Appeals Board, while adopting the philosophy and the analysis of the Special Administrative Law Judge cannot adopt the Special Administrative Law Judge's mathematics. *Hughes* gives approximately equal weight to the claimant's loss of ability to perform work in the open labor market and loss of ability to earn a comparable wage. A twelve percent (12%) loss of ability to perform work in the open labor market when coupled with a thirty-five percent (35%) loss of ability to earn comparable wages, with equal weight given to each, equates to a twenty-three and one-half percent (23.5%) permanent partial general body work disability. The Special Administrative Law Judge, in awarding claimant a thirty-two percent (32%) permanent partial general body work disability appears to have transposed the numbers appropriate to this Award. In all other respects the Award of Special Administrative Law Judge William F. Morrissey, dated October 21, 1994, should be, and is hereby, affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated October 21, 1994, should be, and is hereby, modified.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, James F. Green, and against the respondent, Kunshek Chat & Coal Company and its insurance carrier Travelers Insurance Company and the Kansas Workers Compensation Fund, for an accidental injury occurring on July 17, 1992, and based upon an average weekly wage of \$356.57 for 33 weeks temporary total disability compensation at the rate of \$237.73 per week in the sum of \$7,845.09, followed by 5 weeks temporary partial disability compensation at the rate of \$159.84 per week in the sum of \$799.20 followed thereafter by 297.57 weeks permanent partial disability compensation at the reduced rate of \$33.04 per week in the sum of \$9,831.71, followed thereafter by 79.43 weeks permanent partial disability compensation

at the unreduced rate of \$55.86 per week in the sum of \$4,436.96, for a 23.5% permanent partial general body work disability, making a total award of \$22,912.96.

As of February 20, 1996, there is due and owing claimant 33 weeks temporary total disability compensation at the rate of \$237.73 per week in the sum of \$7,845.09, followed by 5 weeks temporary partial disability compensation at the rate of \$158.49 per week in the sum of \$799.20, followed thereafter by 147.86 weeks permanent partial general body work disability at the reduced rate of \$33.04 per week in the sum of \$4,885.29, making a total due and owing of \$13,529.58, which is due and owing in one lump sum minus amounts previously paid. Thereafter, claimant is entitled to 149.71 weeks permanent partial general body disability at the reduced rate of \$33.04 per week in the sum of \$4,946.42, followed thereafter by 79.43 weeks permanent partial general body disability at the unreduced rate of \$55.86 per week until fully paid or further order of the Director.

Future medical benefits are awarded upon proper application to and approval by the Director.

Unauthorized medical expenses of up to \$350.00 are ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

All compensation, medical expenses and costs are to be borne 25% by the respondent and 75% by the Kansas Workers Compensation Fund.

Claimant's attorney fee contract is hereby approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expenses of administration of the Kansas Workers Compensation Act are hereby assessed 25% to the respondent and 75% to the Kansas Workers Compensation Fund to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Martin D. Delmont Transcript of Preliminary Hearing (1-29-93)	\$ 79.95
Transcript of Preliminary Hearing (4-30-93)	\$114.70
Deposition of Bob Kunshek	\$ 79.90
Ireland Court Reporting Deposition of James R. Green	\$221.50
Deposition of Ernest R. Schlachter, M.D.	\$233.30
Deposition of Jerry D. Hardin	\$308.50
Deposition of Karen Crist Terrill	\$142.20
Martha B. Fowks Deposition of Paul W. Toma, M.D.	\$233.65
Hostetler & Associates Deposition of Vito J. Carabetta, M.D.	\$304.60

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, Kansas
Leigh C. Hudson, Fort Scott, Kansas
Gilbert Gregory, Fort Scott, Kansas
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director